

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

CLERK'S OFFICE U.S. DIST. COURT
AT ROANOKE, VA
FILED

MAR 09 2009

JOHN F. CORCORAN, CLERK
BY: *S. Taylor*
DEPUTY CLERK

UNITED STATES OF AMERICA,

v.

JOHNMARLO BALASTA NAPA.

Case No. 7:08-cr-030

ORDER

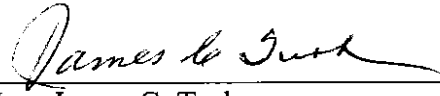
This matter is presently before the court on Defendant Johnmarlo Balasta Napa's Motion to Dismiss. (Dkt. No. 30). On May 22, 2008, the United States indicated Napa on two counts of transmitting a threat to injure the person of another in interstate commerce in violation of 18 U.S.C. § 875(c). Napa now contends that the court should dismiss those charges because the communications referenced in the indictment do not constitute a threat as a matter of law.

Upon review of the existing record, memoranda submitted by the parties, and argument presented at a hearing on March 4, 2008, the court finds Napa's argument unpersuasive. There is substantial evidence to conclude that the communications in question constitute both a "threat," see United States v. Bly, 510 F.3d 453 (4th Cir. 2007) (defining threat to mean a "serious expression of an intent to commit an act of unlawful violence to a particular individual or group"), and a "true threat," see U.S. v. Darby, 37 F.3d 1059, 1066 (4th Cir. 1994) (determined by "the interpretation of a reasonable recipient familiar with the context of the communication[s]"), and thus the court must submit the case to a jury. United States v. Maisonet, 484 F.2d 1356, 1358 (4th Cir. Va. 1973). Accordingly, it is hereby

ADJUDGED AND ORDERED

that Defendant's Motion to Dismiss is **DENIED**. The Clerk of Court is directed to send a copy of this Order to all counsel of record in this matter.

ENTER: This 9th day of March, 2009.

A handwritten signature in black ink, reading "James C. Turk". The signature is written in a cursive style with a large initial "J" and a long horizontal flourish at the end.

Hon. James C. Turk
Senior United States District Judge